

Transcisco  
Industries  
Inc.

1-182A112

**TRANSCISCO**

Patricia M. Bovan  
General Counsel

555 California Street, Suite 2420  
San Francisco, CA 94104  
415 477-9707  
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JUL 1 1991 -3 45 PM

Ms. Mildred Lee  
Recordation Office  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION June 19, 1991

Re: Lease Agreement between American European Express *Lessee*  
and Transcisco Services Company d/b/a Transcisco  
Passenger Rail Company *Lesser*

Dear Ms. Lee:

Enclosed please find for filing one original Lease of Railroad Equipment between American European Express and Transcisco Services Company d/b/a Transcisco Passenger Rail Company along with a notarized copy of said Lease dated June 6, 1991. A check for \$15.00 is also enclosed as the filing fee. Please return to me a copy of the Lease showing the date of recordation.

If you have any questions, please do not hesitate to call me at (415) 477-9707. Thank you for your cooperation in this matter.

Sincerely,

*P. Bovan*

Encls.

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**Interstate Commerce Commission**  
Washington, D.C. 20423

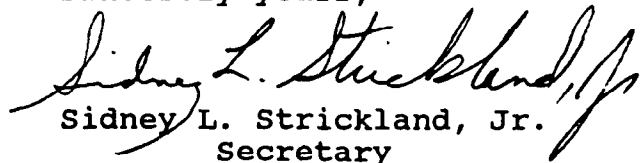
OFFICE OF THE SECRETARY

Patricia M. Bovan  
Transcisco Industries  
General Counsel  
555 California Street  
Suite 2420  
San Francisco, CA. 94104

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/1/91 at 3:45pm, and assigned recordation number(s). 17403

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

LEASE OF RAILROAD EQUIPMENT

JUL 1 1991 - 3 45 PM

INTERSTATE COMMERCE COMMISSION

Lease dated as of June 6, 1991, between AMERICAN EUROPEAN EXPRESS, INC., a Delaware corporation having its principal office at 100 Delwood Beach Road, Panama City, Florida 32411 ("Lessee"), and Transcisco Services Company d/b/a Transcisco Passenger Rail Company, a California corporation having its principal office at 555 California Street, Suite 2420, San Francisco, California 94104 ("Lessor").

## W I T N E S S E T H :

WHEREAS, Lessor has authority to lease certain railroad equipment owned by an affiliate, Transcisco Tours Inc. ("Owner") and as described more fully on Schedule A attached hereto and made a part hereof (the "Equipment"); and

WHEREAS, Lessee desires to lease the Equipment from Lessor upon the terms and conditions set forth below; and

WHEREAS, Lessor desires to lease the Equipment to Lessee upon the terms and conditions set forth below;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. LEASE. Upon the effective date hereof, Lessor will lease to Lessee, and Lessee will lease from Lessor, the Equipment.

2. TERM; GEOGRAPHIC RANGE; PURPOSE. The term of this Lease (the "Term") shall commence on June 6, 1991 and shall continue through and end as of October 15, 1991. The lease shall expire on October 15, 1991 unless Lessor notifies Lessee on or before October 1, 1991, that the lease is subject to extension (with the expectation that such extension would be through January 6, 1992). The terms and conditions of any such extension shall be evidenced in a writing signed by the parties. The Equipment shall be made available to Lessee at the commencement of the Term at the following location: San Jose, California. The Equipment shall be operated by Lessee solely within the boundaries of the contiguous 48 states of the United States of America. The Equipment shall be used or operated by Lessee during the Term hereof solely for the following purposes: Lessee will use the car in conjunction with Lessee's luxury rail travel business.

3. RENT. Lessee will pay Lessor \$9,000.00 per month as rent ("Rent"). Rent is payable monthly in advance, on the sixth day of each month. Rent for partial months will be prorated on a daily basis. Lessee will advance Lessor not later than June 6, 1991, a three-month up-front payment of Rent, totalling \$27,000.00.

The parties acknowledge that the Owner currently owes Lessee

the sum of \$18,490.10. Accordingly, the Lessor, Lessee and Owner have agreed that said sum of \$18,490.10 will be credited against the \$27,000.00 covering three months' Rent, and Lessee will remit the balance of \$8,509.90 by wire transfer to Transcisco Services Company not later than Thursday, June 6, 1991, before the car leaves San Jose, California. Payment of said sum of \$18,490.10 by means of such credits against Rents due hereunder shall constitute full and final payment of all obligations and debts owed by Owner to Lessee. Rent amounts payable to Lessor pursuant hereto shall be paid by certified or cashier's check, money order, wire transfer or Lessee's company check.

All Rent amounts shall be paid to Lessor at 555 California Street, Suite 2420, San Francisco, California 94104, or at such other address as Lessor may specify by notice to Lessee. All such Rent amounts shall be paid without notice or demand, and Lessee's obligation to pay such Rent amounts shall be absolute and unconditional and except for the credits described above for past payments due from the Owner, not subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever (including, without limitation, Abatements due to any present or future claims of Lessee against Lessor under this Lease or otherwise, or against the manufacturer or vendor of the Equipment); nor except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee hereunder be affected by reason of any defect in or damage to, or any loss or destruction of, any Equipment from any cause whatsoever, or the interference with the use thereof by any private person, corporation (other than the Owner or Lessor) or governmental authority, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding. If any Rent or other sums due hereunder are not paid within five days of the due date thereof, Lessee shall pay to Lessor on demand, as additional Rent, interest thereon from the due date until payment, at a rate equal to the lesser of (i) 1.5% per month or (ii) the maximum rate permitted by law.

4. IDENTIFICATION MARKS. The Lessee will cause Equipment to be kept numbered with the identifying number set forth on Schedule A attached hereto with respect thereto, will keep and maintain the distinctive exterior color scheme, marks, lettering, signs and logos present on the exterior of the Equipment, without making any changes, alterations, additions or deletions of any kind thereto or to any portion of the exterior of the Equipment. Lessee will replace promptly any such name, logo, sign, lettering, marking, distinctive color pattern or words located anywhere on the Equipment in the event that the same are removed, defaced or destroyed.

Lessee will not allow the name of any person, association or corporation other than Owner or Lessor to be placed on the Equipment. Lessee will operate the Equipment only as currently marked. Lessee may apply to Lessor for permission to place temporary signs on the Equipment; however, Lessor may grant or deny such permission for any reason or for no reason, and any approval must be reflected in a writing signed by Lessor.

5. DISCLAIMER OF WARRANTIES. LESSEE ACKNOWLEDGES THAT: (i) THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE; (ii) LESSOR IS NOT A MANUFACTURER THEREOF OR A DEALER IN PROPERTY OF SUCH KIND; AND (iii) LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT. Lessor shall not in any event be responsible to Lessee or anyone claiming through Lessee for any damages, direct, consequential, or otherwise, resulting from the delivery, installation, use, operation, performance or condition of any Equipment.

6. MAINTENANCE AND REPAIRS; CONDITION OF EQUIPMENT UPON RETURN. Lessee, at its own cost and expense, shall make all necessary and appropriate repairs, replacements and renewals, whether ordinary or extraordinary, foreseen or unforeseen, in each case so as to keep the Equipment in good operating condition in accordance with the procedures recommended by the manufacturer thereof to the extent reasonably necessary to maintain in full force and effect such manufacturer's warranties. Lessor and Lessee hereby agree that at no time will the Lessee be obligated to pay for or undertake PC-1, PC-2 or PC-2a inspections with respect to the Equipment. Such PC-1, PC-2 or PC-2a inspections shall be solely the obligation and responsibility of, and shall be conducted at the expense of, Lessor.

Lessee shall submit to Lessor monthly reports of the Equipment's hour meter readings evidencing the actual operation of the Equipment, together with appropriate documentation evidencing servicing of Equipment including without limitation filter changes, and oil changes of the two diesel engines and generators and indication of the type of oil and filters used. Lessor reserves the right to specify the frequency of the servicing of the Equipment during the term of the Lease, and Lessee shall comply with Lessor's instructions.

Lessee, from the effective date hereof to the termination hereof, shall not change, alter, remove and/or replace, add or in any other way modify either the interior or the exterior of the Equipment, regardless of whether such modification or alteration would be of a temporary or a permanent nature. The condition of the Equipment as delivered to Lessee shall be the condition of the Equipment as operated by Lessee during the term of this Lease.

Upon termination of the Term of this Lease and the return of the Equipment to Lessor, said Equipment shall be in the same interior and exterior cosmetic, mechanical, electrical, running or other operating condition as said Equipment was in at the time of its delivery into the possession of Lessee.

Prior to the delivery of the Equipment into the possession of Lessee, Lessee and Lessor will jointly conduct a thorough inspection of the Equipment. Lessor and Lessee will jointly make note of all defects, blemishes, nonoperative elements or any other irregularities with respect to the Equipment, and such notations shall be marked down in the form of a list, a punch list or a check sheet ("Notations") to be filled out and signed by Lessee as of delivery of the Equipment into Lessee's possession. Lessee or Lessor may, during the course of the inspection, make a videotape or photographic record of all or part of said inspection. Lessee shall be responsible for returning the Equipment to Lessor in its original delivered condition, free of any defects, damage, scratches, marring, breakage, nonoperative element or irregularities other than those specifically noted as a result of the foregoing inspection, and Lessee shall be liable to Lessor for the repair, restoration or replacement of any element of the Equipment which is not returned to Lessor in its original delivered condition. In the event Lessee does not join Lessor to conduct such an inspection, then Lessor's Notations shall be used as the reference point in assessing the condition of the Equipment upon return to Lessor of the Equipment, in comparison to the original delivered condition.

The wheels for each Equipment shall have, upon said Equipment's return to Lessor, full tread contour and not less than one and one-half inches of remaining service metal. However, any individual wheel which, upon Lessee's taking possession of the Equipment, shall have less than one and three-quarters inches of remaining service metal shall be exempt from the foregoing requirement. In the event that any wheelsets have been replaced prior to the Equipment's return or must be replaced upon said return, they must be replaced in kind, at Lessee's sole cost and expense. In addition, Lessee must repair to Lessor's sole satisfaction or replace in kind, at Lessee's sole cost and expense, all mechanical or electrical parts of the Equipment which have become nonoperative during the Term of this Lease.

Lessee agrees to comply in all respects with all laws of the jurisdictions in which the Equipment may be operated, with the Interchange Rules of the Association of American Railroads and with all applicable rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, Lessee further agrees that the Equipment will not be used by Lessee for any unlawful or other

purpose which would violate any applicable statutes, regulations or ordinances. In the event that such laws or rules require the alteration of the Equipment or in case any Equipment or appliance on any such Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make the affected Equipment available to Lessor immediately, at the destination of Lessor's choosing, for purposes of Lessor's completing said alteration, installation, or replacement at Lessor's expense. However, the obligations of Lessee under this Lease, including the obligation to pay Rent, shall continue regardless of Lessee's loss of use of the Equipment due to any such alteration, installation or replacement. All replacement parts for the Equipment shall be the property of the Owner of the Equipment and title thereto shall immediately vest in the Owner without further act at the time affixed to the Equipment. Lessee shall not make any additions, modifications, alterations or changes to the Equipment unless the same are approved in advance, in writing, by Lessor.

7. INSURANCE. Lessee shall, at its expense, keep the Equipment insured against all risks of loss or physical damage, with minimum limits of \$500,000.00. Lessee shall further at its expense provide and maintain comprehensive public liability insurance in the amount of at least Twenty Five Million Dollars (\$25,000,000.00) against claims for bodily injury, death and/or property damage arising out of the use, Ownership, possession, operation or condition of the Equipment; together with such other insurance as maybe required by law or reasonably requested by Lessor or the Owner. All said insurance shall name the Owner, Transcisco Tours Inc., Lessor and Lessee as parties insured and shall be in form and amount and with insurers reasonably satisfactory to Owner and Lessor, and Lessee shall furnish to Owner and Lessor certificates of the policies of such insurance and each renewal thereof. Each insurer must agree by endorsement upon the policy or policies issued by it that it will give Owner and Lessor not less than 30 days written notice before such policy or policies are cancelled or altered, and, under the physical damage insurance, that (a) losses shall be payable solely to Owner, and (b) no act or omission of Lessee or any of its officers, agents, employees or representatives shall affect the obligation of the insurer to pay the full amount of any loss. Lessee hereby irrevocably authorizes Lessor and/or Owner to make, settle and adjust claims under such policy or policies of physical damage insurance and to endorse the name of Lessee on any check or other item of payment for the proceeds thereof; it being understood, however, that unless otherwise directed in writing by Owner, Lessee shall make and file timely all claims under such policy or policies, and unless Lessee is then in default, Lessee may, with the prior written approval of Owner, settle and adjust all such claims.

8. RISK OF LOSS. As used herein the term "Event of Loss" shall mean any of the following events with respect to any Equipment: (a) the actual or constructive total loss of such Equipment; (b) the loss, theft or destruction of such Equipment or damage to such Equipment to such extent as shall make repair thereof uneconomical or shall render such Equipment permanently unfit for normal use for any reason whatsoever; or (c) the condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to, possession of or use of such Equipment. Except as expressly hereinafter provided, the occurrence of any Event of Loss or other damage to or deprivation of use of any Equipment, howsoever occasioned, shall not reduce or impair any obligation of Lessee hereunder, and, without limiting the foregoing, shall not result in any abatement or reduction in Rent whatsoever. Lessee hereby assumes and shall bear from and after the effective date hereof until the expiration or termination of the Term of this Lease and the return of the Equipment to Lessor, the entire risk of any Event of Loss or any such other damage to or deprivation of use of the Equipment, howsoever occasioned.

Upon the occurrence of any damage to any Equipment not constituting an Event of Loss, Lessee shall, at its sole cost and expense, and notwithstanding the limitations of any insurance reimbursements with respect thereto, promptly repair and restore such Equipment so as to return such Equipment to substantially the same condition as existed prior to the date of such occurrence.

Upon the occurrence of an Event of Loss, Lessee shall immediately notify Lessor and Owner in writing of such occurrence, fully informing Lessor and Owner of all details with respect thereto, and, on or before the first to occur of (i) 30 days after the date upon which such Event of Loss occurs, or (ii) five days after the date on which either Owner and/or Lessor shall receive any proceeds of insurance in respect of such Event of Loss or any underwriter of insurance on the Equipment shall advise Owner, Lessor or Lessee in writing that it disclaims liability in respect of such Event of Loss, Lessee shall pay to Lessor an amount equal to (a) \$500,000 (the "Casualty Value"), less (b) the amount of any insurance proceeds or condemnation or similar award by a governmental authority then actually received by Lessor or Owner on account of such Event of Loss. No delay or refusal by any insurance company or governmental authority in making payment on account of such Event of Loss shall extend or otherwise affect the obligations of Lessee hereunder. Until such date as the Casualty Value is actually received in full by Lessor, Lessee shall continue to pay all Rent and other sums due hereunder up to and including the date of the expiration of the Term of this Lease. Upon the earlier of the expiration of the Term of this Lease or the actual receipt of the Casualty Value by Lessor, this Lease with respect to such Equipment shall terminate and all Rent reserved hereunder with respect to such Equipment, from the date such payment of the Casualty Value is received in full, as aforesaid, to what would

have been the end of the Term hereof, shall abate.

9. GENERAL INDEMNITY. Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save, defend (at Lessee's sole expense) and hold Lessor and Owner harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability arising out of Lessee's capacity or status as a common carrier), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever ("Claim" or "Claims") which may be incurred, imposed on or asserted against Lessor or Owner whether or not Lessor or Owner shall also be indemnified as to any such Claims by any other person (but in no event shall Lessor or Owner be entitled to more than one recovery), in any way relating to or arising out of this Lease or any of the documents executed by Lessee in connection herewith or any of the transactions contemplated hereby ("Lessee Documents"), or the performance or the enforcement after default of any of the terms hereof or of any of the Lessee Documents, or in any way relating to or arising out of the manufacture, ordering, purchase, acceptance, rejection, Ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of the Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable, and any Claims for patent, trademark or copyright infringement; but not including any Claim, other than a Claim as between Lessor and Lessee or otherwise relating to this Lease, arising out of Lessor's operation of the Equipment prior to or subsequent to the Term of this Lease or the period during which the Equipment is in the possession of Lessee, whichever is greater). Lessee agrees that Lessor and Owner shall not be liable to Lessee for any Claims caused directly or indirectly by the inadequacy of the Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any of the foregoing or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of Lessee. The indemnities and assumptions of liability provided in this Lease, including this Section 9 and Sections 10 and \_\_\_\_\_ shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law or otherwise.

10. GENERAL TAX INDEMNITY. In the event that any gross receipts tax, sales tax, use tax, retailer's occupation tax or other similar tax is due and owing by Lessor or Lessee during the Term hereof with respect to the Equipment subject to this Lease or the Rent attributable thereto, Lessee shall solely bear the cost of payment of such tax and shall indemnify Lessor from the payment of such tax and shall indemnify Lessor from the payment of such

tax. In the event that any such tax is paid by Lessor, the Rent shall be "grossed-up" as may be necessary to ensure that the net after-tax Rent received by Lessor is the amount set forth in Section 3.

11. DEPRECIATION. Lessee will not claim any depreciation deductions with respect to the Equipment.

12. TITLE. Title to all Equipment shall remain in Owner exclusively. Lessee shall keep the Equipment free from all liens and encumbrances caused or suffered by Lessee. "Lien" means any mortgage, pledge, security interest, encumbrance, lien, charge or any other right or claim of any person. Lessee shall use the Equipment in a careful and proper manner, in compliance with all laws and regulations. Lessee shall execute and/or furnish to Lessor any further instruments and assurances reasonably requested from time to time by Lessor to protect its and Owner's interest in the Equipment, and Lessee shall at its expense otherwise cooperate to defend the title of Owner and to maintain the status of the Equipment as personal property.

13. QUIET ENJOYMENT. So long as Lessee shall not be in default and fully performs all of its obligations hereunder, Lessor will not interfere with the quiet use and enjoyment of the Equipment by Lessee.

14. RETURN. Upon the expiration or earlier termination of this Lease with respect to any Equipment, Lessee shall return such Equipment to Lessor. Lessee shall make such return, at its expense, by causing such Equipment to be delivered to such storage tracks within the United States of America as Lessor may designate or, if Lessor does not so designate, to the Lessor's maintenance base area in San Jose, California. Lessee shall pay to Lessor on demand as additional Rent hereunder, the cost of any repairs necessary to then place the Equipment in the condition required by this Lease. The assembling, repair, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, repair, deliver, store and transport the Equipment. Equipment returned to the Lessor pursuant to this Section shall (i) be in the condition required by Section 6 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads.

15. LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee represents and warrants to Lessor that (a) Lessee is and shall at all times hereafter be duly organized and validly existing in good standing under the laws of the state indicated above and has duly authorized the execution, delivery and performance of this Lease; (b) this Lease has been duly and validly executed and delivered by

Lessee and constitutes and will constitute the valid and binding obligation of Lessee, and is and will be enforceable in accordance with its terms; (c) the execution, delivery and performance of this Lease by Lessee will not violate any law or other governmental requirement or, if Lessee is a corporation, Lessee's corporate charter or by-laws; nor will it constitute a default under any agreement, instrument or document to which Lessee is now or hereafter a party or by which Lessee is now or will hereafter be bound; (d) the Equipment is being leased by Lessee solely for business or commercial purposes. Each of the above warranties shall be continuing throughout the term of this Lease.

16. ASSIGNMENT, SUBLEASE, MERGER. Lessee hereby consents to any assignment or encumbrance by Owner and/or Lessor of the Lease or the rights of Owner in the Equipment, with or without notice. Lessee hereby further consents to any assignment or encumbrance by Lessor of all or any part of the Rent payable hereunder or the rights of Lessor in the Equipment, with or without notice. Lessee agrees that the rights hereunder of any assignee or creditor of Owner or Lessor shall not be subject to any defense, set-off or counterclaim that Lessee may have against Owner or Lessor, and that any such assignee or creditor shall have all of Owner's or Lessor's rights hereunder, but none of Owner's or Lessor's obligations. Notwithstanding the foregoing, no such assignment or encumbrance shall release any of Lessor's obligations hereunder or any claim which Lessee may have against Lessor and no such assignment shall increase Lessee's liability under this Lease. Neither this Lease nor any of Lessee's rights hereunder shall be assignable by Lessee, either by its own act or by operation of law. Any such attempted assignment shall be void and, at Lessor's or Owner's option, may be considered cause for termination of this Lease. Lessee further agrees it will not, without the prior written consent of Lessor, allow the Equipment to be used or operated by persons other than employees of Lessee.

17. LESSOR'S RIGHT TO PERFORM OBLIGATIONS. If Lessee shall fail to make any payment or perform any act or obligation required of Lessee hereunder, Lessor may (but need not) at any time thereafter make such payment or perform such act or obligation at the expense of Lessee. Any payment so made or expense so incurred by Lessor shall constitute additional Rent hereunder payable by Lessee to Lessor upon demand. The performance of any act or payment of any monies by Lessor, as aforesaid, shall not be deemed a waiver or release of any obligation or default on the part of Lessee. Notice is hereby given that Lessor shall not be liable for any labor, service or materials furnished or to be furnished to Lessee or with respect to any Equipment.

18. TRAINING. Prior to Lessee's use or operation of the Equipment, Lessor will send a member of its mechanical staff to the Chicago Union Station to provide training to Lessee in the use and maintenance of the power car.

19. INSPECTION. Lessor shall have the right to inspect the Equipment during the Term of the Lease upon four calendar days' prior notice. Lessee shall pay the round trip air fare and one night's hotel accommodations for one person for each of up to four trips by Lessor's personnel to inspect the Equipment during and at the conclusion of the Lease Terms.

20. COMPLIMENTARY TICKETS. Lessee will provide Lessor with ten complimentary roundtrip tickets, on a space available basis, during the Term of this Lease.

21. EVENTS OF DEFAULT. Lessee shall be in default hereunder if any of the following events (each an "Event of Default") shall occur and be continuing: (a) Lessee shall fail to pay any installment of Rent or other sum due hereunder and such failure shall continue for more than five (5) days after the date due; or (b) Lessee shall fail to observe or perform any other provision of this Lease and such failure shall continue for more than five (5) days after written notice thereof given by Lessor to Lessee; or (c) Lessee shall fail to maintain in effect any insurance required by this Lease; or (d) any representation or warranty of Lessee in this Lease or in any document executed by Lessee in connection herewith shall prove to be untrue when made in any material respect; or (e) Lessee shall become insolvent, cease doing business as a going concern or make an assignment for the benefit of creditors; or (f) Lessee shall apply for or consent to the appointment of a custodian, receiver, trustee or liquidator for all or substantially all of its property, or such a custodian, receiver, trustee or liquidator is appointed without the consent of Lessee and such appointment is not vacated within five (5) days; or (g) a petition shall be filed by or against Lessee under the Federal Bankruptcy Act or any similar law or regulation providing for the relief of debtors (including, without limitation, a petition for reorganization, arrangement, composition, extension or liquidation), and if such petition is filed against Lessee it is not dismissed, within five (5) days; or (h) the Equipment is moved beyond the geographic boundary set forth in Section 2.

22. REMEDIES UPON DEFAULT. If an Event of Default shall occur and be continuing, Lessor may, at its option, do one or more of the following: (a) terminate this Lease and Lessee's rights hereunder; (b) proceed by appropriate court action to enforce performance of the terms of this Lease and/or recover damages for the breach hereof; (c) by notice in writing, cause Lessee, at Lessee's expense, promptly to return the Equipment to the possession of Lessor in accordance with the terms of Section 14 hereof, or Lessor directly or by its agent, and without notice or liability or legal process may enter upon any premises where any Equipment is located, take possession of such Equipment, and either store it on said premises without charge or remove the same; and/or (d) declare as immediately due and payable and forthwith recover

from Lessee, as liquidated damages and not as a penalty, an amount equal to all Rent and other sums then due and unpaid hereunder. In the event of any repossession of any Equipment by Lessor, Lessor may (but need not), without notice to Lessee, hold or use all or part of such Equipment for any purpose whatsoever. No termination, repossession or other act by Lessor after default shall relieve Lessee from any of its obligations hereunder. In addition to all other charges hereunder, Lessee shall pay to Lessor on demand all fees, costs and expenses incurred by Lessor as a result of such default, including without limitation, reasonable attorneys', appraisers' and brokers' fees and expenses and costs of removal, storage, transportation, insurance, redelivery to a location satisfactory to Lessor, and disposition of the Equipment. In the event that any court of competent jurisdiction determines that any provision of this Section 22 is invalid or unenforceable in whole or in part, such determination shall not prohibit Lessor from establishing its damages sustained as a result of any breach of this Lease in any action or proceeding in which Lessor seeks to recover such damages. To the extent permitted by law, Lessee hereby waives trial by jury in any action between Lessor and Lessee. The remedies provided herein in favor of Lessor shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

23. NON-WAIVER. Lessor's failure at any time to require strict performance by Lessee of any provision hereof shall not waive or diminish Lessor's rights thereafter to demand strict performance thereof or of any other provision. None of the provisions of the Lease shall be held to have been waived by any act or knowledge of Lessor, but only by written instrument executed by lessor and delivered to Lessee. Waiver of any default shall not be a waiver of any other or subsequent default.

24. NOTICES; INSPECTION, COMMUNICATIONS. Lessee shall give Lessor and Owner immediate notice of any attachment, judicial process, lien, encumbrance or claim affecting the Equipment, any loss or damage to the Equipment or material accident or casualty arising out of the use, operation or condition of the Equipment, and any change in the residency or principal place of business of Lessee. Lessor may (but need not), for the purpose of inspection, at all reasonable business hours, enter from time to time upon the Equipment and upon any premises where the Equipment is located. All notices required or permitted hereunder shall be in writing and shall be deemed duly given if delivered personally or mailed, by first class, registered or certified mail, to the respective addresses of the parties set forth at the beginning of the Lease or any other address designated by notice served in accordance herewith.

25. MISCELLANEOUS. If any provision of the Lease or the application thereof is hereafter held invalid or unenforceable, the

remainder of the Lease shall not be affected thereby, and to this end the provisions of this Lease are declared severable. Titles to Sections shall not be considered in the interpretation of the Lease. This Lease (including the Schedule attached hereto) sets forth the entire understanding between the parties and may not be modified except in a writing signed by both parties. No options to purchase any of the Equipment or extend the Term of this Lease with respect to any Equipment have been granted to Lessee by Lessor, and none shall be implied by this Lease. The necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships and/or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. Subject to the terms hereof, the Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective personal representatives, successors and permitted assigns.

26. LAW GOVERNING. The terms of the Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, and such additional rights arising out of the filing, recording or depositing of this Lease or out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which this Lease shall be filed, recorded or deposited or in which the Equipment may be located.

27. RECORDING; EXPENSES. Lessee, at Lessee's sole expense, will cause the Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Lessee will promptly furnish to Lessor evidences of such filing, recording or depositing.

28. AUTHORIZATION, EXECUTION AND DELIVERY OF DOCUMENTS. It is a condition of the obligations of Lessor under this Lease that the following documents shall have been duly authorized, executed and delivered by the parties thereto, shall each be satisfactory in form and substance to Lessor, and shall be in full force and effect as of the effective date of this Lease:

28.1 INSURANCE. Lessor shall have received satisfactory evidence as to Lessee's due compliance with the provisions of Section 7 hereof.

28.2 RECORDATION, ETC. Lessor shall have received such other documents and evidence with respect to Lessee as Lessor may reasonably request in order to establish the consummation of the transactions contemplated by the Lease and compliance with the conditions set forth in this section 28.

28.3 OFFICER'S CERTIFICATE. The following statements shall be correct and Lessor shall have received a certificate signed by

the President or Vice President of Lessee, dated as of the effective date hereof, to the following effect: (i) the representations and warranties of Lessee contained in Section 15 hereof are correct on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties shall be correct on and as of such earlier date) and (ii) no event has occurred and is continuing, or would result from the leasing of such Equipment pursuant hereto, which constitutes an Event of Default.

29. EFFECTIVE DATE. This Lease shall become effective as of June 6, 1991.

IN WITNESS WHEREOF, Lessor and Lessee have executed this

Lessor: Transcisco Passenger  
Rail Services Company

Lessee: American European  
Express, Inc.

By Nick A

By W.D. Acun

Title Vice President

Title President

Date 6/6/91

Date 6/7/91

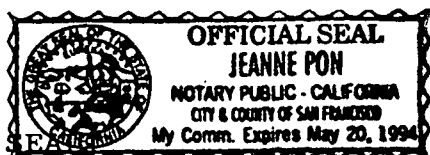
Nick A  
6/26/91

SCHEDULE A

1. Description of Car. One power car ("car"), identification number 800381, owned by Transcisco or its affiliates, having two 500 KW generators capable of providing head-end power. The car is in reliable mechanical condition.

STATE OF California )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

On this 6th day of JUNE, 1991, before me personally appeared Nicholas Atkeson, to me personally known, who, being **by** me duly sworn, says that he is a Vice President of Transcisco Passenger Rail Services and that said instrument was signed and sealed on behalf of said corporation as duly authorized; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[NOTARIAL

Jeanne Pon  
Notary Public

STATE OF Florida )  
 ) ss:  
COUNTY OF Bay )

On this 7th day of June, 1991, before me personally appeared W. F. Sporn, to me personally known, who, being **by** me duly sworn, says that he is President of American European Express, Inc., and that said instrument was signed and sealed on behalf of said corporation as duly authorized; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public, State of Florida  
My Commission Expires Sept. 22, 1992  
Bonded Thru Troy Fain - Insurance Inc.

Phyllis L. Bottorice  
Notary Public

[NOTARIAL SEAL]

**ALL-PURPOSE ACKNOWLEDGMENT**

NO 209

State of California  
County of San Francisco }

On June 25, 1991 before me, Jeannie Pon, Notary Public,  
DATE NAME, TITLE OF OFFICER • E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Nicholas G. Atkeson  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Jeannie Pon  
SIGNATURE OF NOTARY

**CAPACITY CLAIMED BY SIGNER**

- ☐ INDIVIDUAL(S)  
☒ CORPORATE Vice President  
OFFICER(S) \_\_\_\_\_ TITLE(S) \_\_\_\_\_  
☐ PARTNER(S)  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ SUBSCRIBING WITNESS  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

Transisco Passenger  
Rail Services Company

**ATTENTION NOTARY:** Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document Lease of Railroad Equipment (duplicate  
Number of Pages 15 Date of Document June 6, 1991 (copy)  
Signer(s) Other Than Named Above \_\_\_\_\_